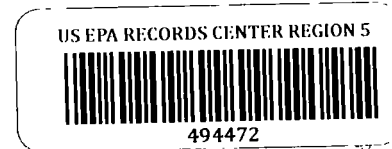


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7/21/97

July 21, 1997

VIA FACSIMILE TO: (312) 886-7160
& UNITED STATES CERTIFIED MAIL



Sherry L. Estes, Esquire
Assistant Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

RE: U.S. v. Accra Pac and Estate of Warner Baker

Dear Ms. Estes:

On May 2, 1997 I wrote on behalf of Accra Pac, Inc. and objected to EPA's Enforcement Action Memorandum (EAM). Accra Pac asked that EPA not place the EAM in the administrative record and that EPA take steps to keep the EAM from being published to third parties. You responded on behalf of EPA in a letter dated June 27, 1997 that I received first by fax July 1, 1997. Your letter stated that EPA would not refrain from placing the EAM in the administrative record and that the EAM would "remain in the public domain" until the occurrence of a decision favorable to Accra Pac.

Procedural Posture

Your letter purports to mark the end of informal negotiations regarding the dispute and states that "this dispute must first be submitted pursuant to these [Consent Decree dispute resolution] provisions, or it simply cannot be considered by the District Court." However, your letter also states that the dispute "is not cognizable under the dispute resolution provisions of the Consent Decree..." and states that "if you do choose to invoke the dispute resolution provisions, EPA's initial position will be that there is no actual dispute that can be recognized under the dispute resolution provisions of the decree." Given those statements, Accra Pac fails to understand the utility of further correspondence with EPA before applying to the District Court for relief and is puzzled by EPA's insistence on this. EPA's position clearly will not change after the Director of the Waste Management Division, EPA Region V, has reviewed the dispute. And, EPA has already stated its dispute resolution position. Thus, the dispute appears ripe for District Court consideration. Nonetheless, Accra Pac will allow this letter to constitute its written statement of position in accordance with Section XVII, paragraph 53(a) of the Consent Decree. However, Accra Pac does not wish this to

July 21, 1997

Page 2

become a mechanism to significantly delay consideration of the dispute by the District Court. Pursuant to section XVII, 53(a), EPA has a deadline for stating its responsive position, but there is no deadline for the Director of the Waste Management Division to render a decision. Because Accra Pac is concerned about the public availability of the EAM, I brought this issue to your attention in our telephone conversation earlier today. I proposed that if the Director had not issued a decision within a certain time frame, say within twenty days after EPA submitted its position, Accra Pac and EPA would agree that EPA's position represented final agency action on which Accra Pac's notice of appeal could be predicated. You would not agree to this. Accordingly, if the Director has not rendered a decision within thirty days after EPA's position has been submitted, Accra Pac will proceed with filing its notice of appeal. That notice will ask the Court to order EPA to render a decision or declare the dispute ripe for its consideration. The notice will also include notice of the underlying dispute. I do not know of an alternative mechanism to ensure that the action moves forward promptly.

Statement of Position

Accra Pac objects to EPA's method of signifying its final approval of the Treatability Study. The Enforcement Action Memorandum (EAM) is objectionable because it inaccurately portrays human health and environmental risks associated with the Warner Baker site by asserting repeatedly that the site may pose an imminent and substantial endangerment to human health and the environment. The objectional allegations and references to the record that demonstrate that the allegations are unfounded are set out in more detail in Accra Pac's May 2, 1997 letter to EPA and the memorandum that accompanied the letter. The letter and memorandum are incorporated by reference in this position statement.

The EAM is also objectionable because the allegations are unnecessary to the purpose of signifying EPA's approval of the Treatability Study. A complete discussion of EPA's rationale for approving the Treatability Study was contained in the Proposed Plan, the document that signified EPA's earlier provisional approval of the Treatability Study. The Consent Decree at section V(11)(b) provides that a treatability study of alternatives for remediation systems was to be submitted to EPA. This requirement is also set out in the Scope of Work at section II(B)(1)(b). Pursuant to Consent Decree sections V(11)(c) and IX(paragraph 28) and Scope of Work section II(B)(1)(c), EPA was to make a provisional decision approving the Treatability Study in whole or in part, approving the study on specified conditions, modifying the study to cure any deficiencies, disapproving the study in whole or in part and directing that it be modified, or any combination of the above. Pursuant to Scope of Work section II(B)(2)(b), the Treatability Study and EPA's provisional decision was then subject to public comment and review. Pursuant to section II(B)(1)(c) of the Scope of Work, EPA

July 21, 1997

Page 3

was then to issue a final decision regarding the Treatability Study.

In this case, the Treatability Study was submitted to EPA on May 28, 1996. In advance of the period for public comment, EPA issued a Proposed Plan containing its provisional approval. The Proposed Plan recounted the history of the site, its present status, discussed the alternative remediation systems proposed in the Treatability Study and stated the reasons for EPA's provisional approval of the alternative that was proposed by Accra Pac. The Proposed Plan was then distributed to certain potentially interested persons and made available to the general public as part of the public comment period. In sum, the Proposed Plan contained all information that EPA thought relevant to the public's consideration of the site and the proposed remediation systems provisionally approved by EPA. No adverse public comments were received during the public comment period. Consequently, all that was called for by the Consent Decree to signify final approval of the Treatability Study was a brief notice that no adverse public comments were received and thus EPA's earlier provisional approval was final.

Also, the EAM is objectionable because it attempts to state as "fact," assertions that were settled without any factual resolution. EPA filed suit March 6, 1989, alleging that the site presented an imminent and substantial endangerment. On August 20, 1993, a Consent Decree was lodged with the District Court that specified the settlement was without adjudication of the contested issues of fact and law and without any admission of liability on the part of Accra Pac: "Now therefore, without adjudication of any remaining issues of law or fact, and without admission of liability or wrongdoing on the part of the Defendants, and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows: . . ." (Consent Decree, pp. 1, 2.) It is improper for EPA to gratuitously state, as "fact," allegations that were purposely settled without resolution. Accra Pac disagrees vigorously with the allegations. The published allegations are damaging to its reputation, adversely affect it vis a vis potential investors and other persons, and the allegations provide potential toxic tort claimants with an apparent prima facie Rule 11 basis to institute a suit where, in fact, there are no grounds for suit. It is contrary to the settlement for EPA to continue to pursue making allegations which it agreed in the Consent Decree would not be adjudicated.

Last, Accra Pac also objects to the following statement at page 10, paragraph 3, of the EAM: [T]his Action Memorandum requires the Settling Defendants to dig up and properly dispose of the hydrocarbon-contaminated soil, or to otherwise demonstrate to U.S. EPA that residual soil contamination levels do not present an inordinate risk to human health or the environment. The decision to waive or modify the cleanup standards set in this Action Memorandum and/or the Consent Decree is at the sole discretion of U.S. EPA.

July 21, 1997
Page 4

Accra Pac disputes the underlined sentence if EPA construes it to mean that it may unilaterally determine the adequacy of a demonstration regarding the risk posed by residual soil contamination. The adequacy of a demonstration of the acceptability of leaving residual soil contaminants in place would be subject to dispute resolution.

Scope of Review

It is Accra Pac's position that dispute resolution should proceed under Paragraph 55 of the Consent Decree, not Paragraph 54. Paragraph 54 governs dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under the applicable principals of administrative law. The matters in dispute here, are EPA's method of signifying final approval of the Treatability Study, and whether EPA has unreviewable discretion over the adequacy of a demonstration regarding risks posed by residual soil contamination. Those disputes do not pertain to the selection or adequacy of any response action and are not disputes accorded review on the administrative record under applicable principles of administrative law.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Richard S. VanRheenen', with a long horizontal line extending to the right.

Richard S. VanRheenen

RSV/vlr